

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
ERF WIRELESS BUNDLED SERVICES, INC.
Petition for Reconsideration of Pending
Termination of License for Stations WQJE288,
WQJE289, and WQJE290
File Nos. 0003475659, 0003475663,
0003475674

ORDER ON RECONSIDERATION

Adopted: May 26, 2010

Released: May 27, 2010

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we dismiss as untimely a petition for reconsideration of our placement into termination pending status of three industrial/business pool microwave stations in Louisiana.

II. BACKGROUND

2. On August 7, 2008, the Wireless Telecommunications Bureau (the Bureau) issued licenses for industrial/business pool microwave stations with call signs WQJE288, WQJE289, and WQJE290 (the Stations) to ERF Wireless Bundled Services, Inc. (ERF). The deadline for constructing the three stations was February 7, 2010. On November 10, 2009, the Bureau sent construction/coverage reminder letters to ERF. On March 17, 2010, license auto-termination letters were sent and the Stations entered termination pending status. Accordingly, on the same day, the Bureau provided public notice of

1 See File Nos. 0003475659, 0003475663, 0003475674 (granted Aug. 7, 2008).

2 Id.

3 Construct/Coverage Reminder, Ref No. 4921550, 4921551 (Nov. 10, 2009).

4 Auto Termination Letters, Ref. Nos. 4957223, 4957224, 4957225 (Mar. 17, 2010).

5 When a licensee fails to file a notification that it has completed construction by an applicable buildout deadline, the license, location, or frequency is placed in "termination pending" status. For a license, location, or frequency in that status, the Bureau presumes that the licensee did not meet buildout requirement. If the licensee does not file a petition for reconsideration within 30 days after public notice of the termination pending status demonstrating that it met that buildout requirement, the status of the license, location, or frequency is changed to "terminated" as of the buildout deadline. See Wireless Telecommunications Bureau Announces Deployment Of "Auto-Term," the Automated Feature in its Universal Licensing System That Identifies Unconstructed Stations Resulting in Automatic Termination of Licenses, Public Notice, 21 FCC Rcd 163 (WTB 2006).

the pending license terminations.⁶ On April 26, 2010, the Bureau received a petition for reconsideration from ERF.⁷

III. DISCUSSION

3. Section 405(a) of the Communications Act, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the date of public notice of Commission action.⁸ Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.⁹ Since public notice of the impending license terminations was given on March 17, 2010, pursuant to Section 1.4(b)(4) of the Commission's Rules, the first day to be counted in computing the thirty-day period was March 18, 2010. The last day for filing a petition for reconsideration was April 16, 2010.

4. We received ERF's Petition on April 26, 2010. Therefore, we find that the Petition was filed late. The United States Court of Appeals for the District of Columbia Circuit has consistently held that the Commission is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act,¹⁰ except where "extraordinary circumstances indicate that justice would thus be served."¹¹ We note the filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹² We do not believe that ERF has shown such extraordinary circumstances to be present here. Indeed, ERF has failed to acknowledge that it did not file in a timely manner. Accordingly, we dismiss the Petition as late-filed.

5. If ERF wishes to continue operating the terminated facilities, it must file a completed FCC Form 601, in accordance with all applicable Commission Rules, to reauthorize the facilities. In the interim, ERF should file a request for Special Temporary Authority, in accordance with Section 1.931 of the Commission's Rules, if it wishes to continue operating the facilities.

⁶ Wireless Telecommunications Bureau Site Based Licenses Termination Pending, Report No. 5732, *Public Notice* (Mar. 17, 2010) at 2.

⁷ Petition for Reconsideration, ERF Wireless Bundled Services, Inc. (filed Apr. 26, 2010) (Petition).

⁸ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

⁹ 47 C.F.R. § 1.4.

¹⁰ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

¹¹ *Gardner v. FCC*, 530 F.2d at 1091.

¹² See, e.g., *Panola Broadcasting Co., Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); *Metromedia, Inc., Memorandum Opinion and Order*, 56 FCC 2d 909 (1975).

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by ERF Wireless Bundled Services, Inc. on April 26, 2010 IS DISMISSED.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau